IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

JAMES A. CARPENTER	:	
	:	
Plaintiff,	:	CIVIL ACTION
	:	
v.	:	NO. 00-5644
	:	
R.M. SHOEMAKER CO.	:	
	:	
Defendant.	:	

MEMORANDUM

BUCKWALTER, J. May 6, 2002

Presently before the Court is Defendant's Motion for Summary Judgment. For the reasons stated below Defendant's motion is denied as to Count I of Plaintiff's complaint and granted as to Count II of Plaintiff's complaint.

I. FACTS

James A. Carpenter ("Plaintiff" or "Carpenter") brings this two count action against his former employer, R.M. Shoemaker Co. ("Defendant" or "Shoemaker"). Count I asserts a claim for unpaid overtime wages in violation of the Fair Labor Standards Act ("FLSA"). Count II asserts that Shoemaker's refusal to pay overtime wages to Plaintiff entitles him to damages under Pennsylvania's Wage Payment and Collection Law ("WPCL").

Shoemaker is a large regional construction management company that is hired by owners of property and architects to

manage the construction and renovation of all types of buildings. Shoemaker engages subcontractors to complete the various manual tasks of a construction project. Shoemaker employees coordinate, direct and manage those subcontractors for the overall completion of the project.

Plaintiff was hired by Shoemaker in June 1998 as a "Project Superintendent." According to Plaintiff, no job description was provided to him upon his hire but that it was understood that he would serve as a "working foreman" for the projects to which he was assigned. According to a job description created by Defendant subsequent to Plaintiff's employ, a Project Superintendent's primary responsibilities are "to provide ongoing leadership and supervision of the day-to-day construction operations assuring effective trade coordination, efficient work activities sequencing, and sufficient daily onsite labor to produce an uncompromising work product consistent with the project plans and specifications."

During his employment with Shoemaker, Plaintiff was assigned to three construction projects. From July 1998 through November 15, 1998 Plaintiff was assigned to the First Union project, which involved converting and renovating hundreds of bank branches for First Union National Bank after it had merged with CoreStates. While assigned to the First Union project, Plaintiff worked 76 hours per week. From November 15, 1998

through May 1, 1999, Plaintiff was assigned to the First Union Minor Cap project, a more detailed renovation of approximately twelve First Union facilities. While assigned to the First Union Minor Cap project, Plaintiff worked 60 hours per week. From May 1, 1999 until March 19, 2000 Plaintiff was assigned to the Villanova University Project, charged with constructing four large dormitory buildings. While assigned to the Villanova University project, Plaintiff worked 55½ hours per week.

Plaintiff was hired at an annual salary of $80,000 plus the use of a leased pick up truck. Prior to commencing work at the First Union Minor Cap project, Plaintiff's annual salary was increased to $86,000. Prior to commencing work at the Villanova University project, Plaintiff's annual salary was increased to $90,000.

Shoemaker did not compensate Plaintiff over and above his annual salary for any hours he worked in excess of 40 hours per week. In the instant action, Plaintiff now seeks these overtime wages, which he alleges are due to him pursuant to the FLSA. As to Plaintiff's FLSA claim, Defendant argues that summary judgment is appropriate because it is not required to compensate Plaintiff for overtime wages because he was an exempt employee under the "administrative employee" exemption of the FLSA as well as the motor carrier exception to the FLSA. As to Plaintiff's WPCL claim, Defendant argues that summary judgment is

also appropriate because Plaintiff was not contractually entitled to overtime wages.

II. STANDARD

A motion for summary judgment shall be granted if the Court determines "that there is no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law." Fed. R. Civ. P. 56(c). "The non-movant's allegations must be taken as true and, when these assertions conflict with those of the movant, the former must receive the benefit of the doubt." Goodman v. Mead Johnson & Co., 534 F.2d 566, 573 (3d Cir. 1976). In addition, "[i]nferences to be drawn from the underlying facts contained in the evidential sources . . . must be viewed in the light most favorable to the party opposing the motion." Id.

III. DISCUSSION

A. Administrative Employee Status

The first question is whether Plaintiff was employed in an administrative capacity with Shoemaker so as to be exempt from the maximum hours provision of the Act.

The relevant statutory exemption provides:

> The provisions of section 206 [setting minimum wage] and section 207 [requiring premium pay for overtime hours] of this title shall not apply with respect to . . . any employee employed in a bona fide . . . administrative . . . capacity[.]

29 U.S.C. § 213(a)(1). Therefore, if Plaintiff was employed in a bona fide administrative capacity, the FLSA does not require that Shoemaker compensate him for overtime hours.

Section 213(a)(1)'s "exemptions from the Act's requirements are to be 'narrowly construed against the employers seeking to assert them and their application limited to those establishments plainly and unmistakably within their terms and spirit.'" Martin v. Cooper Elec. Supply Co., 940 F.2d 896, 900 (3d Cir. 1991) (quoting Arnold v. Ben Kanowsky, Inc., 361 U.S. 388, 392, 80 S. Ct. 453, 456, 4 L. Ed. 2d 393 (1960). "The burden of proving these exemptions is upon the employer, and if the record is unclear as to some exemption requirement, the employer will be held not to have satisfied its burden." Martin, 940 F.2d at 900 (quoting Idaho Sheet Metal Works, Inc. v. Wirtz, 383 U.S. 190, 206, 86 S. Ct. 737, 747, 15 L. Ed. 2d 694 (1966)).

Under the applicable test for high salaried administrative employees, (hereinafter referred to as the "short test"[1]), the employee will be exempt if (1) the employee's primary duty consists of responsible office or nonmanual work directly related to management policies or general business

1. Labor has issued agency regulations interpreting the exemption for administrative employees. These regulations outline both long and short tests for determining bona fide administrative employee status. See 29 C.F.R. § 541.2(a)-(e) (long test); 29 C.F.R. §§ 541.2(e)(2) and 541.214 (short test). As the parties agree, only the short test applies here because Plaintiff is a high salaried employee who earns not less that $250 per week. See 29 C.F.R. § 541.214.

operations of the employer or the employer's customers; and (2) such primary duty includes work requiring the exercise of discretion and independent judgment. See 29 C.F.R. § 541.214(a).

1. Prong One – Work Related To Management Policies or General Business Operations

Labor's regulations appearing at 29 C.F.R. § 541.205(a) - (d) define the meaning of the first prong of the short test. Subsection (a) provides:

> The phrase "directly related to the management policies or general business operations of his employer or his employer's customers" describes those types of activities relating to the administrative operations of a business as distinguished from "production"[.] In addition to describing the types of activities, the phrase limits the exemption to persons who perform work of substantial importance to the management or operation of the business of his employer or his employer's customers.

29 C.F.R. § 541.205(a).

Thus, subsection (a) first establishes the analytical importance of an administrative operations/production work dichotomy to be used when assessing an employee's "primary duty" for purposes of first prong analysis. Subsection (b) of the regulation explicates this dichotomy by fleshing out the character of "administrative operations of the business" as the work performed by so-called white-collar employees engaged in "servicing" a business as, for example, advising the management, planning, negotiating, representing the company, purchasing,

promoting sales, and business research and control. 29 C.F.R. § 541.205(b).

Subsection (a) of the regulation also establishes that only persons who perform work of "substantial importance to the management or operation of the business" will satisfy the first prong of the short test. Subsection (c) of the regulation describes "work of substantial importance" as employees who not only participate in the formulation of management polices or in the operation of the business as a whole, but also those employees whose work affects policy or whose responsibility it is to carry it out. The phrase also includes a wide variety of persons who either carry out major assignments in conducting the operations of the business, or whose work affects business operations to a substantial degree, even though their assignments are tasks related to the operations of a particular segment of the business.

In summary then, the first prong of the short test of the administrative exemption asks ultimately whether an employee's primary work duty is "directly related to management policies or general business operations" of his employer. This ultimate question subsumes two other inquiries: (1) whether an employee is a "production" rather than an "administrative" worker within the meaning of the statute and 29 C.F.R. 541.205(a) and (b); and (2) whether an employee performs "work of substantial

importance" to his employer by directly or indirectly formulating, affecting, executing or carrying out management policies by, for example, undertaking "major assignments" or performing work which "affects business operations to a substantial degree" within the meaning of 29 C.F.R. § 541.205(a) and (c). Martin, 940 F.2d at 902 (summarizing short test).

Plaintiff argues that the first prong is not satisfied because he was not the ultimate authority for any project and he merely performed production tasks with the goal of completing each project pursuant to predefined specifications. To determine whether Plaintiff's primary responsibilities at Shoemaker satisfy prong one of the short test (i.e., are nonmanual tasks directly related to management policies or general business operations of Defendant), the Court must examine Plaintiff's duties while employed at Shoemaker. 29 C.F.R. § 541.2(a).

The Project Superintendent is Shoemaker's on-site contact and field deputy for the project that Shoemaker is hired to manage. The Project Superintendent reports to either the Project Manager or the Vice President of Operations of Shoemaker. As a Project Superintendent, Plaintiff implemented and manipulated the time schedule that was devised at the beginning of the project in order to ensure on time completion of the work. He monitored the work of subcontractors to ensure proper completion and quality that met specifications determined by the

owner and the architect. Plaintiff compiled daily reports showing what occurred throughout the day in order to update the Project Manager. He reviewed the constructability of the architectural documents to ensure that what was called for on paper could actually be built in the field. He also surveyed the project site to ensure that items would fit, locations would work and no structural problems would be encountered. Plaintiff anticipated and identified problems, particularly with respect to items that were not correct for the planned specifications and gave suggestions to the owner or architect for resolution. He would also walk the job site on the alert for safety problems, which he was responsible for responding to if encountered. In sum, through the direction, management and coordination of all subcontractors on the project, Plaintiff was the employee from Shoemaker who was on-site to make sure the scope of work was properly completed.

It appears that Plaintiff's job responsibilities were primarily nonmanual and managerial in nature. While Plaintiff performed manual tasks, such as installing door frames, plowing snow, and installing handrails from time to time in order to assist subcontractors on the job, he was not required to do so by Shoemaker and voluntarily assumed these duties.

Turning to the language at 29 C.F.R. § 541.205(b) which permits a finding of administrative work when an employee

"services" his employer's business by, for example representing, negotiating, purchasing, and promoting sales on his employer's behalf, Defendant's only relevant argument asserts that Plaintiff, as the Project Superintendent, participated in the administrative operations of the business because he "represented" the company to subcontractors, architects and owners since he was the sole employee at the project site in contact with these individuals on a day to day basis. While it is true that Plaintiff represented Shoemaker when subcontractors, owners and architects communicated with him on-site at the project locations, Defendant has not established what impact, if any, such communication had on the administrative operations of the business or whether Plaintiff's on-site representation affects Shoemaker's business operations to a substantial degree. It appears that most of this communication flowed through Plaintiff to a more senior person on Shoemaker's staff, who then decided what course of action was necessary.

Defendant's motion amply sets forth various job duties and responsibilities performed by Plaintiff, arguing that these duties evidence that Plaintiff was required to exercise discretion and independent judgment while employed as a Project Superintendent. However, these points are only relevant to prong two of the short test. With respect to prong one of the short test, Defendant appears to ask the Court to assume that the tasks

performed by Plaintiff fall under the characterization of administrative work because the nature of Defendant's business is management oriented as opposed to industrial oriented and because Defendant paid Plaintiff nearly $100,000 a year.

In determining whether the tasks above are administrative or production oriented, "it is important to consider the nature of the employer's business." Martin, 940 F.2d at 903. Shoemaker's business is the management and coordination of construction projects and its primary purpose is the on time, accurate completion of a particular construction project for the owner of a property. Thus, Shoemaker aims to produce the effective management of construction projects for others. Viewed in this manner, Plaintiff could be construed as participating on the production side, as opposed to the administrative side, of Defendant's business because he was in the field generating the service which Shoemaker manufactures, i.e., management of construction projects.

Thus, in light of the "product" produced by Shoemaker, a question remains as to whether Plaintiff's primary duties were directly related to the management policies of general business operations of Shoemaker because Defendant has not clearly delineated that Plaintiff's primary job responsibilities were administrative as opposed to production oriented.

As for the first prong's other requirement, that employees perform "work of substantial importance to the management or operation" of an employer's business, Defendant asserts that Plaintiff performed work of critical importance to the management and operation of Shoemaker's construction management business. The record establishes that Plaintiff, as a Project Superintendent, was important to the success of Shoemaker. However, the question remains as to whether Plaintiff carried out "major assignments" on behalf of Shoemaker as that term is intended in 29 C.F.R. § 541.205(c). Defendant does not elaborate as to how Plaintiff's responsibilities as a Project Superintendent substantially affected the structure of Defendant's business operations and management policies. See Martin, 940 F.2d at 906. Plaintiff managed the day to day construction aspects of a particular project, but it does not necessarily follow that he developed or implemented specific work assignments consistent with an overall company policy.

Therefore, because it is not plain and unmistakable from Defendant's motion and supporting documentation that Plaintiff's work was directly related to management policies or general business operations of Shoemaker or its customers, a finding of administrative employee status at this summary judgment stage is not appropriate. As prong one of the short test is dispositive of the administrative exemption issue with

respect to Plaintiff's position as a Project Superintendent for Shoemaker, it is not necessary to reach prong two analysis of this case.

B. Motor Carrier Status

In general, employees which operate vehicles in interstate activities which require them to transport property essential to their job duties are exempt from overtime compensation requirements of the FLSA. Friedrich v. U.S. Computer Services, 974 F.2d 409, 419 (3d Cir. 1992). Defendant argues that Plaintiff is an exempt employee under this exception to the FLSA, known as the motor carrier exception, because he drove his vehicle to and between Pennsylvania, New Jersey and Delaware while performing his job on both First Union projects and transported tools that he used on the job.

The relevant statutory exemption provides:

> The provisions of section 207 [(requiring premium pay for overtime hours)] of this title shall not apply with respect to–
> (1) any employee with respect to whom the Secretary of Transportation has power to establish qualifications and maximum hours of service pursuant to the provisions of section 31502 of Title 49.

29 U.S.C. § 213(b). According to 49 U.S.C. § 31502, referenced in the above statute, the Secretary of Transportation is permitted to set maximum hours for employees of (1) motor carriers and (2) motor private carriers when needed to promote

safety of operation and such employees are exempt from the requirements of the FLSA.

A "motor carrier" is defined as "a person providing motor vehicle transportation for compensation." 49 U.S.C. § 13102(12). The term "motor private carrier" includes "a person, other than a motor carrier, transporting property by motor vehicle when--(A) the transportation is [across state lines as provided in 49 U.S.C. § 13501]; (B) the person is the owner, lessee, or bailee of the property being transported; and (C) the property is being transported for sale, lease, rent or bailment or to further a commercial enterprise." 49 U.S.C. § 13102(13).

The exemption of an employee from the maximum hours provisions of the FLSA under section 213(b)(1) depends both on the class to which his employer belongs and on the class of work involved in the employee's job. Carpenter v. Pennington Seed, Inc., No. CIV.A.01-734, 2002 WL 465176, at *2 (E.D.La. Mar. 26, 2002). The power of the Secretary of Transportation to establish maximum hours and qualifications of service of employees, on which the exemption depends, extends to those classes of employees who (1) are employed by carriers whose transportation of passengers or property by motor vehicle is subject to his jurisdiction under 49 U.S.C. § 31502(b) (i.e., motor carriers and motor private carriers), and (2) engage in activities of a character directly affecting the safety of operation of motor

vehicles in the transportation on the public highways of passengers or property in interstate or foreign commerce within the meaning of the Motor Carrier Act. Id.

The motor carrier exemption, as with the administrative employee exemption, is construed narrowly against the employer and the employer bears the burden of proving its applicability.

The first question is whether Plaintiff was employed by either a motor carrier or a motor private carrier (i.e., is Shoemaker a motor carrier or motor private carrier?). Defendant appears to argue that it is a motor private carrier by asserting that Plaintiff, in the course of his employment, drives across state lines to perform work, transporting tools for use in such work.

It is undisputed that Plaintiff drove his vehicle to and between Pennsylvania, New Jersey and Delaware while performing his job on both First Union projects. It is also undisputed that Plaintiff carried tools in his truck, which he used from time to time at the job site. However, Defendant has not established that it owned the tools that Plaintiff transported as required by 49 U.S.C. § 13102(13)(B). In fact, the record supports the opposite conclusion, in that various deposition testimony establishes that Plaintiff was not required to transport any property of Defendant and the tools he used from time to time in the performance of his duties were owned by

Plaintiff. Defendant has not satisfied the definitional elements of a motor private carrier in its motion for summary judgment and therefore, Plaintiff cannot be found exempt under the motor carrier exception to the FLSA at this time. Accordingly, summary judgment on this point is denied.

C. WPCL

In Count II of his complaint, Plaintiff alleges that Defendant's refusal to compensate him for overtime entitles him to damages under the WPCL. Defendant argues that Plaintiff's WPCL claim cannot be based solely on wages due under the FLSA, in the absence of a contractual right to such wages.

Pennsylvania's WPCL provides employees a statutory remedy to recover wages and other benefits that are contractually due to them. Oberneder v. Link Computer Corp., 696 A.2d 148, 150 (Pa. 1997). Plaintiff, apparently recognizing that the WPCL is available only for contract-based wage and overtime claims, argues that Defendant implicitly agreed to compensate him in accordance with all applicable law, including overtime prescribed by the FLSA, and thereby created a promise to pay overtime compensation to him.

There is nothing in the record to suggest that overtime wages are due to Plaintiff pursuant to contract. Rather, the record supports that Plaintiff's WPCL claim is by force of the FLSA. Therefore, Plaintiff's WPCL claim fails and Defendant's

Motion for Summary Judgment is granted with respect to this claim only.

IV. CONCLUSION

Defendant's motion for summary judgment with respect to Count I of Plaintiff's complaint, alleging violations of the FLSA is denied. It is not plain and unmistakable from Defendant's motion that Plaintiff's work is directly related to management policies or general business operations. In addition, Defendant has not established that it is a motor private carrier, which would exempt its employees who transport property essential to their job duties from overtime compensation.

Defendant's motion for summary judgment with respect to Count II of Plaintiff's complaint alleging damages pursuant to the WPCL is granted. There is no evidence in the record that establishes that Plaintiff was contractually entitled to overtime wages.

An appropriate Order follows.

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

JAMES A. CARPENTER	:	
	:	
Plaintiff,	:	CIVIL ACTION
	:	
v.	:	NO. 00-5644
	:	
R.M. SHOEMAKER CO.	:	
	:	
Defendant.	:	

ORDER

AND NOW, this 6th day of May, 2002, upon consideration of the Defendant's Motion for Summary Judgment (Docket No. 18), Plaintiff's response in opposition thereto (Docket No. 19), and other matters of record, it is hereby **ORDERED** that Defendant's Motion is **DENIED** in part and **GRANTED** in part.

Defendant's motion for summary judgment with respect to Count I of Plaintiff's complaint, alleging violations of the Fair Labor Standards Act is **DENIED**.

Defendant's motion for summary judgment with respect to Count II of Plaintiff's complaint alleging damages pursuant to Pennsylvania's Wage Payment and Collection Law is **GRANTED**.

It is further **ORDERED** that **TRIAL** is set for Monday, June 24, 2002 at 9:30 a.m. in Courtroom 14A.

BY THE COURT:

RONALD L. BUCKWALTER, J.